

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

WILLIAM R. JACKSON,)	
)	
Claimant,)	
)	
v.)	
)	
DIAMANTE ENTERPRISES, LLC,)	
dba DIAMOND GLASS,)	IC 01-022001
)	
Employer,)	
)	
and)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND ORDER
CONTINENTAL CASUALTY)	
COMPANY,)	
)	
)	Filed April 7, 2005
Surety,)	
)	
Defendants.)	
_____)	

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Robert D. Barclay, who conducted a hearing in Idaho Falls, Idaho on September 3, 2004. Claimant, William R. "Rex" Jackson, was present in person and represented by attorney Brad D. Parkinson of Idaho Falls. Defendant Employer, Diamante Enterprises, LLC, dba Diamond Glass, and Defendant Surety, Continental Casualty Company, were represented by attorney Glenna M. Christensen of Boise, Idaho. The parties presented oral and documentary evidence. This matter was continued for the taking of a post-hearing deposition, the submission of briefs, and subsequently came under advisement for a decision.

ISSUES

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER - 1

The noticed issues to be resolved are:

1. Whether Claimant suffered a personal injury arising out of and in the course of employment;
2. Whether Claimant is entitled to reasonable and necessary medical care as provided for by Idaho Code § 72-432, and the extent thereof; and,
3. Whether Claimant is entitled to temporary partial and/or temporary total disability (TPD/TTD) benefits, and the extent thereof.

ARGUMENTS OF THE PARTIES

Claimant maintains he injured his right shoulder while removing a vehicle windshield, and that following a surgical procedure he continued to experience pain and functional limitations. He argues his shoulder injury has never resolved and that he is entitled to the surgical procedure recommended by Dr. Huntsman. Claimant further argues unpaid medical bills and TTD benefits associated with his recommended surgery be paid.

Defendants concede Claimant was injured in an industrial accident, and acknowledge paying him medical and TTD benefits, but deny that the need for a second surgery is causally related to the accident. They maintain Claimant continually improved after his surgery, that he was released to work without an impairment rating, and that only after an incident lifting furniture did he complain of shoulder pain. Since he has not demonstrated the requisite causal relationship, Defendants further argue Claimant is not entitled to the second surgical procedure. They also argue Claimant has not presented any evidence to support the award of additional TTD benefits, and that many of the “unpaid” medical bills he has submitted have either been paid or are unrelated to his shoulder condition. Defendants ask the Commission to deny Claimant’s request for additional medical and

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER - 2

TTD benefits.

Claimant asserts a review of the medical records and testimony shows he was never pain or symptom free after his industrial accident, that his condition never completely resolved, and that the need for the second surgery is related to the original accident, not an intervening incident. He asks the Commission to provide him with medical and associated TTD benefits so that he can move forward and pursue a more productive life.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant and his spouse, Lily M. Jackson, taken at the September 3, 2004, hearing in this matter;
2. Claimant's Exhibits 1 through 10 admitted at the hearing;
3. Defendants' Exhibits A through E admitted at the hearing; and,
4. The deposition of Casey I. Huntsman, M.D., taken by Claimant on October 11, 2004.

After having considered all the above evidence, the briefs of the parties, and the recommendations of the Referee, the Commission hereby issues its decision in this matter.

FINDINGS OF FACT

1. Employer is an Idaho Falls motor vehicle windshield repair and replacement company. Claimant would travel from Employer's facility to install windshields over a large portion of eastern Idaho and into adjacent portions of Wyoming. He had worked for Employer since 1999, and for other companies as a glass installer prior to the industrial accident.

2. Claimant was seen by Gregory E. Biddulph, M.D., orthopedic surgeon, for a right wrist problem in July 2000. Claimant was also seen by Fred L. Sermon, D.C., in November and

December 2000 for neck, mid-back, and low-back pain. The condition was described as work-related, and caused by straining to remove a windshield on November 3, 2000, while working for Employer. There is no mention of right shoulder pain.

3. Late on the afternoon of February 26, 2001, Claimant felt something give in his right shoulder followed by a sharp cramp-like pain while attempting to pull out and remove a vehicle windshield at a customer's residence in Jackson Hole, Wyoming. He was a glass installer for Employer. Claimant reported the incident to his supervisor, Eric Henry, and then finished the job.

4. Claimant saw Wade Christensen, P.A.-C., on March 2, 2001. P.A.-C. Christensen is associated with Wallace C. Baker, M.D., Claimant's family physician. Claimant reported bilateral shoulder pain and left elbow pain. P.A.-C. Christensen diagnosed either tendonitis or bursitis and initiated conservative care.

5. Claimant continued to work. Because of his condition, Employer assigned him chip repairs, leak repairs, and easy windshield installations. The amount of time Claimant needed to complete a task increased significantly.

6. On March 16, 2001, P.A.-C. Christensen noted that Claimant "stopped in stating he is still having some pain in his elbows. This patient had bilateral shoulder pain and left elbow pain. His shoulder pain is improving with physical therapy." He was given some Darvocet which he stated did not help a lot. He was given some more Vioxx and some Vicoprofen tablets for his pain to help him sleep.

7. Claimant was also seen by P.A.-C. Christensen on March 28, 2001, with a chief complaint of elbow pain. As noted in the chart: "His shoulders are feeling great but his elbows have not improved." The assessment was "bilateral tendonitis in elbows." He was referred to Dr.

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Biddulph to have his elbows evaluated and was to continue on Vioxx as needed until seen by the orthopedist.

8. At Dr. Baker's request, Claimant saw Dr. Biddulph on April 30, 2001. Dr. Biddulph diagnosed bilateral shoulder impingement syndrome and bilateral chronic lateral epicondylitis, both of which he opined were work-related. Dr. Biddulph noted on physical exam that on both his shoulders "he has a full range of motion but he does have a lot of pain through the impingement arc and almost a quasi positive drop arm test through this range of motion position because of pain. There is no pain over the AC joint. There is pain over the anterior/lateral and lateral borders of the shoulders. With crepitation in the subacromial space. He has pain with resisted abduction and resisted external rotation." He assessed impingement syndrome in both shoulders. He prescribed a course of medications, physical therapy, and later cortisone injections in Claimant's right shoulder and left elbow. Second and third injections followed with short-term relief. Claimant was prescribed Ultram pain medication on May 4 and again on May 14, 2001.

9. Claimant saw Dr. Biddulph for follow-up on both shoulders and both elbows on June 4, 2001. The right shoulder, status post-injection, was noted to be "doing very well." The note indicated that his left elbow is doing extremely well but has gradual recurrence of pain which appeared to be worsening with each day. It was noted "[h]is left shoulder has also been painful and with the nice result he had to his right shoulder with injection, he wanted to proceed with injection of the left shoulder today." On physical examination his left shoulder had a full range of motion actively and passively. He had pain through the impingement arc and pain with impingement type maneuvers of Neer with no instability. Chart notes also show no pain over the biceps tendon and no pain over the AC joint. Claimant was given an injection in the left shoulder.

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10. Claimant saw James C. Gardner, D.C., on June 5, 2001, for neck and upper back pain, and bilateral upper extremity numbness. Dr. Gardner attributed the condition to the February 26, 2001, industrial accident and recommended a course of chiropractic care. Overall improvement of Claimant's neck pain was noted. Surety paid for Dr. Gardner's treatments.

11. On June 23, 2001, Claimant received a prescription refill for Ultram.

12. Dr. Biddulph saw Claimant for follow-up on July 8, 2001 for his bilateral elbows and bilateral shoulder pain and difficulty. In regards to Claimant's right shoulder, he noted the pain was not tolerable at rest, at night, or at work, which was interfering with his ability to perform his job. It was noted the pain was refractory to any form of treatment, including injections. An MRI of Claimant's right [shoulder] was ordered.¹ At that time, Dr. Biddulph noted his belief that Claimant's shoulder did not have a tear but rather significant impingement syndrome and would benefit from arthroscopic subacromial decompression. Claimant's Ultram prescription was again filled on July 24 and July 31, 2001.

13. On August 6, 2001, an MRI was performed on Claimant's right shoulder. David R. Warden, III, M.D., radiologist, interpreted the x-rays as mild bony hypertrophy involving the distal end of the right clavicle consistent with mild acromioclavicular degenerative joint disease but noted that no evidence of a rotator cuff or labral tear was seen.

14. On August 8, 2001, Dr. Biddulph diagnosed resistant impingement syndrome of the right shoulder and chronic lateral epicondylitis of the left elbow. He noted that the MRI of Claimant's shoulder did not show any sign of a rotator cuff or labral tear. He recommended surgical repair and

¹ The medical record notes the MRI was ordered for Claimant's elbow but then indicates a tear or impingement syndrome. The MRI performed on August 6, 2001 was actually of Claimant's right shoulder.

Claimant agreed. Claimant's Ultram prescription was again filled on August 8, 14, 20 and 31.

15. Dr. Biddulph performed a left elbow lateral epicondylectomy and a right shoulder arthroscopic debridement and subacromial decompression on Claimant on September 4, 2001, at Eastern Idaho Regional Medical Center. Surgery revealed a small flap tear of the anterior superior labrum, type III acromion process and reactive bursitis. Surety paid for the procedure.

16. Surety paid Claimant either TTD or TPD benefits from September 4, 2001, until November 25, 2001. Claimant was seen by Dr. Casey Huntsman for follow-up on his surgeries. He was again prescribed Ultram on September 13, 17 and 21. The entry after this states "refill of Ultram denied per Dr. B." On October 17, 2001, Claimant did not show for his appointment with Dr. Biddulph.

17. Physical therapy at Channing Physical Therapy for Claimant's right shoulder followed the surgery and continued through at least November 5, 2001 when Claimant returned to work. The final chart note indicated Claimant continued to have decreased functional strength. Surety paid for the therapy.

18. Claimant was seen by Dr. Biddulph on October 19, 2001, wherein it was noted in his chart that "He feels the shoulder is doing very well and his left elbow is also doing well. He demonstrates a full range of motion of each, actively and passively." He was to gradually increase his activities and return to work in two weeks at two hours per day for the first week and then gradually work up in two-hour increments. He was restricted from lifting over 30 pounds with the left arm and reaching overhead with the right arm.

19. On November 30, 2001, Dr. Biddulph noted Claimant was doing very well and is

very happy with his progress. On exam, it was noted he had full range of motion in his right shoulder with occasional pain due to prolonged overhead or reaching activities. Claimant was markedly improved compared to his condition prior to surgery. His restrictions were lifted, and he was cautioned to avoid activities which caused pain.

20. After returning to work full-time, Claimant's production fell off due to pain. He left Employer in January 2002 and enrolled in a computer-engineering course at Idaho State University.

21. Claimant both called in and was seen by P.A.-C. Christensen numerous times over the next 12 months with no mention in the chart notes of right shoulder pain in spite of the seemingly detailed nature of the notes that were taken. Claimant was given various medications for ear infection, left foot pain, phlegm, anxiety, obesity, post-nasal drainage, and depression. None of the medications prescribed were for pain.

22. Claimant did follow up with Dr. Biddulph on May 31, 2002, on his left elbow and right shoulder stating both were better than they were prior to surgery. He noted complaints of numbness at night in his small finger and half his ring finger, which quickly dissipated once he moved his arm around. He denied numbness during the day as well as weakness. On physical examination, he demonstrated full range of motion of his right shoulder with no pain through the impingement arc. He showed some weakness of his deltoid and it was noted he could strengthen his rotator cuff further as well. Dr. Biddulph noted that Claimant was at MMI with regard to his shoulder and elbow but recommended he splint and pad the ulnar nerve at night to resolve the numbness.

23. At Surety's request, Claimant saw Rheim B. Jones, M.D., for an IME on October 7, 2002. After noting a positive impingement sign on examination, Dr. Jones diagnosed subacromial impingement syndrome of the right shoulder aggravated by work activities with Employer and

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precipitated by a work injury on February 26, 2001, and work-related left tennis elbow. He noted that Claimant had a full range of motion of the right shoulder and left elbow with no basis for permanent impairment. He opined Claimant was medically stable and released him to work, but further opined that heavy manual labor or demanding sports would cause a flare-up in the impingement in both the shoulder and the elbow and further medical or surgical treatment may be necessary at that time.

24. Claimant's house burned down on November 5, 2002. He and his family stayed at a local motel for approximately one month and then moved into a basement apartment owned by his mother-in-law. A high school friend donated some furniture to Claimant when he and his family moved into the apartment. The furniture was located in a storage shed.

25. On November 6, 2002, Claimant called in to Dr. Baker's office stating his house burned down and requested medication refills including Allegra D, Phentermine, and Lexapro. No pain medications were mentioned.

26. Claimant saw P.A.-C. Christensen on December 18, 2002, stating he woke up the morning after helping move furniture with right shoulder pain. He was not sure what happened to cause this pain since he did not lift anything over his head. P.A.-C. Christensen's notes indicate Claimant had had arthroscopic surgery on the shoulder and that it had seemed to be fine since that time. Christensen also noted that Claimant stated it hurt to lift his shoulder and elbow up away from his body and abducting motion. Claimant was given a cortisone injection and his pain immediately subsided.

27. In January 2003 it was noted by P.A.-C. Christensen that Claimant failed to show up for a follow-up regarding his shoulder pain. On January 13, 2003, it was also noted that Claimant

was having trouble swallowing the Lortab due to the oblong shape and it being a pill vs. a capsule. He was seen on January 14 for a metal fragment in his thumb. No mention was made of his shoulder pain. January 17, Claimant visited Christensen for a follow-up on his hand but he did not stay for treatment. No mention was made of his shoulder pain. On January 21, 2003, Christensen's chart notes indicate he was seen for his hand and that he was still waiting to get in to see the orthopedist for his right shoulder pain. It was also noted he did not feel like the Vioxx was helping enough so he was given Celebrex for pain. It was noted by Christensen that all of the medications he had written were for tablets, and now Claimant was unable to swallow the tablets. He was prescribed Ultram in combination with the Celebrex. Chart notes over the next four months indicated he had been prescribed Lortab, Vicoprofen, Vioxx, Celebrex, Ultram and Darvocet N-100 as he continued to complain of shoulder pain. It was noted that on April 9, 2003 Claimant called P.A.-C. Christensen stating he needed a refill of the Darvocet as his nephew had flushed it down the toilet. This was noted to be refilled one time only.

28. In May, Claimant had throat surgery. In August, Claimant saw Christensen for a mole removal. No mention was made of his shoulder pain in the notes.

29. On September 19, 2003, P.A.-C. Christensen noted Claimant's ongoing right shoulder pain was increasing over the last week. The notes indicated the right shoulder revealed no muscle atrophy, no ecchymosis or inflammation. He showed pain in all planes of movement. Claimant was given a cortisone injection in his shoulder with some pain relief. P.A.-C. Christensen felt Claimant had some type of rotator cuff injury that was never taken care of correctly. He ordered a MRI.

30. Patient called Christensen's office requesting a Valium to take before having the MRI. It was called in to the pharmacy. The MRI of Claimant's right shoulder was conducted on October

1, 2003. R. Douglas Greally, M.D., noted a rotator cuff tear. He also noted the examination utilized more current techniques, which in turn increased sensitivity when compared to a prior MRI performed on August 6, 2001, a month prior to Dr. Biddulph's surgery. At the time the first MRI of the right shoulder was performed, it was noted by the radiologist that no rotator cuff tear was shown.

31. P.A.-C. Christensen referred Claimant to Casey I. Huntsman, M.D. Dr. Huntsman, an orthopedic surgeon, was in the same office as Dr. Biddulph, and had previously treated both Claimant's spouse and his daughter. Claimant had also seen him in Dr. Biddulph's absences after his September 4, 2001, surgery.

32. Claimant saw Dr. Huntsman on October 14, 2003, who noted Claimant's right shoulder pain had been getting worse over the past six months. There was no mention of Claimant's having moved furniture in the chart notes. Dr. Huntsman noted that Claimant had been on Hydrocodone. He noted that the radiograph series showed a good previous decompression with a mild amount of AC arthritis and no other abnormalities were noted. The right shoulder MRI showed a small linear tear of the supraspinatus tendon representing a split in the tendon that appeared to be full thickness. A right rotator cuff tear was diagnosed and arthroscopic surgery was recommended. Dr. Huntsman further noted that conservative treatment, including injections and physical therapy, had not helped Claimant.

33. As a student, Claimant was covered under Medicaid. Dr. Huntsman, however, refused to perform the surgery under Medicaid because he believed it should be handled as a workers' compensation claim. Surety, however, denied any further care.

34. In a letter to Claimant's counsel dated March 30, 2004, P.A.-C. Christensen stated, that in spite of his surgery, Claimant continued to complain of right shoulder pain to him on a

continuous basis even though it might not have been reflected in some of his dictation. In fact, Claimant's right shoulder pain was not noted in *any* of Christensen's extensive and detailed notes from the date Claimant had surgery on September 4, 2001 until December 18, 2002, the day after Claimant had moved furniture, even though Claimant had been seen by Christensen at least six times during that period.

35. In response to a question from Claimant's counsel, Dr. Huntsman opined on June 14, 2004, that the surgical procedure he was recommending for Claimant's right shoulder was a necessary continuation of the treatment related to his original work-related shoulder injury. His opinion was to a reasonable degree of medical probability. At his deposition on October 11, 2004, Dr. Huntsman agreed that it was possible the tear was not there during the first MRI. Huntsman based his opinion on the need for the second surgery on Claimant's statement that he never got better and upon Christensen's statements. He also stated that Dr. Biddulph felt like he [Claimant] was doing quite well but his follow-up was three months in length, and he did not see him again for that problem. Dr. Huntsman testified that both Dr. Biddulph and Christensen's records stated that Claimant did have a period that he had been doing well after the surgery.

36. Claimant started working part-time for an automobile parts store in Spring 2004.

37. At hearing, Claimant's spouse stated he would periodically experience a flare-up in shoulder pain for no apparent reason, and that he would then go back on pain medication. She further stated she and a friend moved the heavier pieces of furniture into the apartment, and that Claimant just helped with the smaller things. Claimant, however, stated at hearing that he moved just as much furniture as his wife and their friend did. He testified that he did help move the couch.

38. At his post-hearing deposition, Dr. Huntsman opined the positive impingement sign

Dr. Jones noted in Claimant's right shoulder could have been caused by the bursa re-growing and thickening or it could have been from tendonitis. He noted bursitis, tendonitis, and a rotator cuff tear all cause similar pain symptoms. Dr. Huntsman further opined, that since conservative care had not helped Claimant, it would be reasonable to arthroscopically evaluate the rotator cuff tear and fix it if needed.

39. Dr. Huntsman further opined rotator cuff injuries are usually caused by reaching and overhead activities, and that Claimant's actions moving furniture, where he did not lift overhead, would not have put a lot of strain on the cuff. All of Dr. Huntsman's opinions were based on Claimant's subjective history as given to him and on Christensen's chart notes, and were given to a reasonable degree of medical probability.

40. It is unclear from the records submitted to the Commission which medical bills related to Claimant's industrial injuries were not paid by Surety, as they are incomplete and not detailed. Surety apparently stopped paying medical benefits after Dr. Jones' IME.

DISCUSSION

The provisions of the workers' compensation law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 793 P.2d 187 (1990). The humane purposes which it serves leaves no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 910 P.2d 759 (1996).

1. **Injury (Causation).** The Idaho workers' compensation law defines injury as a personal injury caused by an accident arising out of and in the course of employment. An accident is defined as an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place

where it occurred, causing an injury. An injury is construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. Idaho Code § 72-102 (17).

A claimant must prove not only that he or she was injured, but also that the injury was the result of an accident arising out of and in the course of employment. *Seamans v. Maaco Auto Painting*, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. *Beardsley v. Idaho Forest Industries*, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). “Probable” is defined as “having more evidence for than against.” *Fisher v. Bunker Hill Company*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). Magic words are not necessary to show a doctor’s opinion was held to a reasonable degree of medical probability; only their plain and unequivocal testimony conveying a conviction that events are causally related. See *Jensen v. City of Pocatello*, 135 Idaho 406, 412-13, 18 P.3d 211, 217 (2001).

Defendants concede Claimant was injured in a February 26, 2001, industrial accident, but deny his current right shoulder condition is causally related to the accident. They argue his shoulder condition improved after Dr. Biddulph’s surgery, that he was released to work without an impairment rating, and that only after lifting furniture did he complain of shoulder pain.

P.A.-C. Christensen stated Claimant continued to complain of right shoulder pain on a continuous basis though it was not reflected in his chart notes. Claimant continued to take pain medications until cut off by Dr. Biddulph. His workload was reduced to accommodate him. Dr. Jones noted a positive impingement sign on his examination of Claimant some two months prior to the furniture-lifting incident. He did not have the benefit of the second MRI which showed a rotator

cuff tear that the first did not, but noted the first showed only mild degenerative changes of the acromioclavicular joint. P.A.-C. Christensen felt Claimant had some type of rotator cuff injury that was never taken care of. The first MRI taken on August 6, 2001 did not support this finding. A subsequent MRI taken after the first surgery and after the furniture moving incident confirmed a rotator cuff tear. Dr. Huntsman opined the surgical procedure he was recommending for Claimant's right shoulder was a necessary continuation of the treatment related to his original work-related shoulder injury however this was based upon Claimant's subjective, unsubstantiated reports of ongoing pain. The chart notes are noticeably absent any notation of pain in Claimant's shoulder for over a year after surgery in September 2001. Clearly his shoulder had stabilized prior to the furniture moving. There was no pain medication noted in the medical records as having been prescribed after September 21, 2001, until after the furniture moving incident on December 18, 2002. The "new" pain and increased need for pain medication came after the furniture moving incident. Clearly, the explanation of what activity Claimant performed in moving the furniture does not match the resulting and alarming change in his right shoulder condition. The Commission concludes Claimant's current right shoulder condition is not causally related to his February 26, 2001, industrial accident.

2. **Medical Benefits.** The employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. Idaho Code § 72-432 (1). The Idaho Supreme Court has held that for the purposes

of Idaho Code § 72-432 (1), medical treatment is reasonable if the employee's physician requires the treatment and it is for the physician to decide whether the treatment is required. *Mulder v. Liberty Northwest Insurance Company*, 135 Idaho 52, 58, 14 P.3d 372, 402, 408 (2000).

Dr. Huntsman opined the surgical procedure he was recommending for Claimant's right shoulder was a necessary continuation of the treatment he had received related to his original work-related shoulder injury. The Commission does not find his opinion persuasive in this matter. Thus, the Commission concludes Claimant is entitled to the medical care and treatment prescribed, given or recommended by Dr. Huntsman and P.A.-C. Christensen for his right shoulder condition including the October 2003 MRI up to October 14, 2003, which has not been previously paid by Surety.

3. Temporary Disability Benefits.

Claimant is seeking TTD benefits for his prospective period of recovery following the proposed surgery by Dr. Huntsman. Since the Commission has determined Claimant's condition is not compensable, the issue is moot.

CONCLUSIONS OF LAW

1. Claimant's current right shoulder condition is not causally related to his February 26, 2001, industrial accident.

2. Claimant is entitled to the medical care and treatment prescribed, provided or recommended by Dr. Huntsman for his right shoulder. Claimant is also entitled to the cost of any medical care prescribed, provided or recommended for him, for his right shoulder condition by P.A.-C. Christensen which has not been previously paid by Surety including the October 1, 2003, MRI up to and including the October 14, 2003 office visit to Dr. Huntsman. He is not entitled to

payment for the proposed surgical procedure by Dr. Huntsman.

3. The issue of whether Claimant is entitled to temporary total disability (TTD) following the proposed surgery by Dr. Huntsman is moot.

* * * * *

ORDER

Based upon the foregoing reasons, IT IS HEREBY ORDERED That:

1. Claimant's current right shoulder condition is not causally related to his February 26, 2001, industrial accident.

2. Claimant is entitled to the medical care and treatment prescribed, provided or recommended by Dr. Huntsman for his right shoulder. Claimant is also entitled to the cost of any medical care prescribed, provided or recommended for him, for his right shoulder condition by P.A.-C. Christensen which has not been previously paid by Surety including the October 1, 2003, MRI up to and including the October 14, 2003 office visit to Dr. Huntsman. He is not entitled to payment for the proposed surgical procedure by Dr. Huntsman.

3. The issue of whether Claimant is entitled to temporary total disability (TTD) following the proposed surgery by Dr. Huntsman is moot.

4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 7th day of April, 2005.

INDUSTRIAL COMMISSION

/s/ Thomas E. Limbaugh, Chairman

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_____/s/_____
James F. Kile, Commissioner

_____/s/_____
R. D. Maynard, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __7__ day of __April_____, 2005 a true and correct copy of **Findings of Fact, Conclusions of Law, and Order** was served by regular United States Mail upon each of the following:

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_____/s/_____